

C. D. Michel - SBN 144258
Clinton B. Monfort - SBN 255609
Sean A. Brady - SBN 262007
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Fax: (562) 216-4445
cmichel@michellawyers.com

Attorneys for Plaintiffs/Petitioners

FILED
DEC 07 2010
FRESNO COUNTY SUPERIOR COURT
By _____

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

SHERIFF CLAY PARKER, TEHAMA) CASE NO. 10CECG02116
COUNTY SHERIFF; HERB BAUER)
SPORTING GOODS; CALIFORNIA RIFLE) **DECLARATION OF BARRY BAUER**
AND PISTOL ASSOCIATION) **IN SUPPORT OF MOTION FOR**
FOUNDATION; ABLE'S SPORTING,) **SUMMARY JUDGMENT OR IN THE**
INC.; RTG SPORTING COLLECTIBLES,) **ALTERNATIVE FOR SUMMARY**
LLC; AND STEVEN STONECIPHER,) **ADJUDICATION AND TRIAL**

Plaintiffs and Petitioners,

vs.

THE STATE OF CALIFORNIA; JERRY
BROWN, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL FOR THE
STATE OF CALIFORNIA; THE
CALIFORNIA DEPARTMENT OF
JUSTICE; and DOES 1-25,

Defendants and Respondents.

Date: January 18, 2011
Time: 8:30 a.m.
Location: Dept. 402
Judge: Hon. Jeff Hamilton

Date Action Filed: June 17, 2010

DECLARATION OF BARRY BAUER

I, Barry Bauer, declare as follows:

1. I am the President of Herb Bauer's Sporting Goods, Inc., a California corporation located in Fresno County that sells or may sell, among other sporting goods, hundreds of distinct ammunition cartridges that can be used interchangeably between handguns and rifles.

2. As President, I am responsible for determining the policies and operating procedures of Herb Bauer's Sporting Goods, Inc. In doing so, I am responsible for ensuring Herb Bauer's Sporting Goods, Inc. complies with all applicable federal, state, and local laws, including California Penal Code sections 12060, 12061, and 12318.

3. I do not know what ammunition is "handgun ammunition" under California Penal Code sections 12060, 12061, and 12318.

4. I do not know what ammunition is principally for use in a handgun. Nor do I know of any source from which I could determine what ammunition suitable for use in both rifles and handguns is principally for use in a handgun under California Penal Code sections 12060, 12061, and 12318, and which is not principally for use in a handgun.

5. I also do not know which ammunition is exempt from California Penal Code sections 12060, 12061, and 12318 as ammunition "designed and intended to be used in 'antique firearms'" manufactured before 1898, because many cartridges used in firearms manufactured before 1898 are also used in firearms manufactured after 1898, including cartridges sold at Herb Bauer's Sporting Goods.

6. Ammunition sales usually account for a significant portion of the profit made by Herb Bauer's Sporting Goods, Inc. For that reason, I intend to continue selling ammunition, including ammunition suitable for use in both a handgun and rifle, at Herb Bauer's Sporting Goods, even if the provisions of California Penal Code sections 12061 and 12318 set to take effect on February 1, 2011 do in fact take effect.

7. It is costly and burdensome for Herb Bauer's Sporting Goods, Inc. to intake and store records for transfers of ammunition as required by Penal Code section 12061(a)(3).

1 8. Approximately every other year, on average, law enforcement agents from the
2 Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE") conduct unannounced
3 inspections of Herb Bauer's Sporting Goods store to assure that it is in compliance with all
4 applicable federal, state, and local laws.

5 9. Approximately every other year, on average, law enforcement agents from the
6 California Department of Justice, Bureau of Firearms also conduct unannounced inspections of
7 Herb Bauer's Sporting Goods store to assure that it is in compliance with all applicable federal,
8 state, and local laws.

9 10. Local law enforcement officers from both the Fresno Police Department and the
10 Fresno County Sheriff's Department are regularly on the premises of Herb Bauer's Sporting
11 Goods store, virtually every week.

12 11. Because I do not know what ammunition is "handgun ammunition" under
13 California Penal Code sections 12060, 12061, and 12318, I fear that I will be prosecuted for
14 unknowingly violating those statutes and will have my federal firearms license and California
15 firearm dealers permit revoked. For example, I fear prosecution and license revocation if I do not
16 record pursuant to Penal Code section 12061(a)(3) the transfer of ammunition law enforcement
17 deems "handgun ammunition" even though I do not know what ammunition is "handgun
18 ammunition" or what ammunition law enforcement will consider "handgun ammunition" under
19 these laws.

20
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23
24 Dated: December 6, 2010

25 
26 Barry Bauer
27 President, Herb Bauer's Sporting Goods, Inc.
28

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On December 6, 2010, I served the foregoing document(s) described as

**DECLARATION OF BARRY BAUER IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR
SUMMARY ADJUDICATION AND TRIAL**

on the interested parties in this action by placing

☐ the original

☒ a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

Edmund G. Brown, Jr.

Attorney General of California

Zackery P. Morazzini

Supervising Deputy Attorney General

Peter A. Krause

Deputy Attorney General (185098)

1300 I Street, Suite 125

P.O. Box 944255

Sacramento, CA 94244-2550

(BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on December 6, 2010, at Long Beach, California.

(PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

Executed on December 6, 2010, at Long Beach, California.

☒ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.

Executed on December 6, 2010, at Long Beach, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

CLAUDIA AYALA